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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/511,599	03/03/2005	Jean-Michel Claude Edouard Beaudouin	5529	7397

7590
Charles W Fallow
Shoemaker and Mattare
10 Post Office Road
Suite 100
Silver Spring, MD 20910

01/30/2008

EXAMINER

MIGGINS, MICHAEL C

ART UNIT	PAPER NUMBER
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1794

MAIL DATE	DELIVERY MODE
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01/30/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/511,599	Applicant(s) BEAUDOUIN ET AL.	
	Examiner Michael C. Miggins	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/16/05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 16 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claim 16 recites the limitation "it" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claims 16 recites the phrase "a certain distance" which renders the claim indefinite because the metes and bounds of the claim are not clearly defined. One of ordinary skill in the art reading the claim would have no idea what a certain distance is.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 9-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clevenger (US 4528228, cited by applicant) in view of Holland (US 5334623, cited by applicant).

Clevenger discloses a packaging material comprising two plies (13 and 14 from Fig. 1 and column 4, lines 1-17) defining between them a cavity (column 4, lines 1-17) and a substance capable of retaining gases in its environment disposed in the cavity (11 from Fig. 1 and column 4, lines 1-36).

Clevenger fails to disclose at least one of the plies being made of a material permeable to gaseous ethylene and impermeable to water vapor.

Holland discloses a ply being made of a material permeable to gaseous ethylene and impermeable to water vapor (column 1, lines 4-8, column 1, line 61 through column 2, line 35) which is formed into films for use in fruit packaging for the purpose of extending the storage life of fruits and other fauna.

Therefore it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided at least one of the plies being made of a material permeable to gaseous ethylene and impermeable to water vapor in the packaging material of Clevenger in order to extend the storage life of fruits and other fauna.

With regard to claim 10, it would have been obvious to have made both plies of Clevenger with the material of Holland in order to extend the storage life of fruits and other fauna.

Clevenger discloses a package wherein the two plies are made of the same material, wherein the substance is bonded to one of the plies and wherein the substance is at a certain distance from the substance of the packaging material (column 4, lines 1-36).

Holland discloses a film (or ply) wherein the material has open pores (since it is permeable to ethylene thus containing pores however small they might be) with electrical polarity (column 1, line 61 through column 2, line 35).

With regard to claim 15, neither reference specifically discloses the packaging of vegetable matter but Clevenger discloses the package may be used with other produce (column 1, line 18-20) and thus the package is clearly capable of use with vegetable matter and it would be obvious to package vegetable matter in order to extend the storage life of the vegetable matter.

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hruby (US 1601625) is cited as relevant art for its disclosure of fruit packaging.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Miggins whose telephone number is 571-272-1494. The examiner can normally be reached on 1:00-10:00pm.

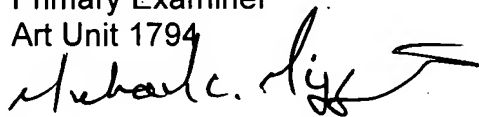
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Michael C. Miggins
Primary Examiner
Art Unit 1794



MCM
November 13, 2007